

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

FILED

DEC 08 2017

Clerk, U.S. District Court
District Of Montana
Helena

CLAYTON JAMES McCLOSKEY,

Plaintiff,

No. CV-17-91-BU-SEH

vs.

ORDER

BIG SKY SENIOR LIVING ON
WATERFORD WAY, WATERFORD
OPERATING, LLC, and JOHN &
JANE DOES 1 - 5,

Defendants.

Defendant filed a Notice of Removal in this Court on December 7, 2017.¹ The Notice grounds the Court's jurisdiction in 28 U.S.C. §§ 1331, claiming that Plaintiff's "Complaint seeks judgment against Waterford based upon claims of wrongful discharge from employment, as well as a claim for overtime compensation filed under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*"²

A defendant removing a case from state to federal court has the burden of

¹ Doc.1.

² Doc. 1 at 2.

establishing federal jurisdiction.³ Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.⁴ It is well-established that “federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint . . . The rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law.”⁵ Moreover, “a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff’s complaint . . .”⁶

Here, Defendant has not met its burden of establishing federal question jurisdiction. Fed. R. Civ. P. 12(h)(3) and applicable case law provide that “[t]he objection that a federal court lacks subject-matter jurisdiction . . . may be raised by a party, or by a court on its own initiative, at any stage in the litigation.”⁷

ORDERED:

This case will be remanded to state court on December 15, 2017, unless

³ *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

⁴ *Gaus*, 980 F.2d at 566.

⁵ *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (citation omitted).

⁶ *Caterpillar Inc.*, 482 U.S. at 393.

⁷ *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 506 (2006)(citation omitted).

Defendant files an amended notice of removal properly alleging jurisdiction on or before that date.

DATED this 8th day of December, 2017.


SAM E. HADDON
United States District Judge